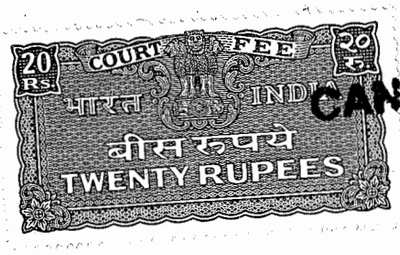

CF 260 (3)

(1)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 65 OF 2005

Single Bench

APPELLANTS Plaintiffs

1. Reku S/o Jaypal aged about 50 years
2. Jagdish S/o Ratu aged about 30 years
3. Lalsay S/o Ratu aged about 22 years

All caste Nagesiya, Occupation Agriculture

R/o Village Chitakvine, Tah Kunkuri, Distt. Raigarh M.P.

P.R. No. 228/04 Received by Shri ... Date 28-1-05

V E R S U S

RESPONDENTS

1. Raghuram S/o Ghalandu aged about 40 years
2. Chuthalu S/o Ghalandu aged about 35 years.
3. Laldev S/o Ghalandu aged about 30 years

All Caste Nagesiya, occupation Agriculture, R/o Chitakvine Tah. Kunkuri, Distt. Raigarh M.P.

MEMO OF SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE, 1908.

(27)

HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench:- Hon'ble Shri Justice Dhirendra Mishra

Second Appeal No.65 of 2005

Appellants/ Plaintiffs :- **Reku and others**

Vs

Respondents/ Defendants :- **Raghuram and others**

Appellants by Shri A.V.Shridhar, Advocate.

JUDGEMENT
(Delivered on 31/03/2005)

Heard on admission.

2. This is second civil appeal of the appellants/plaintiffs. A suit for declaration of title, injunction and confirmation of possession was dismissed by the trial Court and the appeal preferred by the appellants/plaintiffs was subsequently dismissed by the lower Appellate Court. (Parties hereinafter shall be referred as per their description in the trial Court.)

3. The case of the plaintiffs was that the suit land described in schedule 'A' of the plaint belonged to their mother namely Bilai who was the exclusive owner and which was subsequently inherited by the plaintiffs after the death of Bilai on 15.12.1987. Initially, their land was recorded in the name of late Bala Nageshiya and after his death, the same was recorded in the name of his wife Marhi @ Bilri. After the death of Marhi, the name of Bilai was recorded. The father of the defendants Ghalandu got his name mutated in the revenue record in the year 1965 in collusion with Revenue Inspector. However, the same was subsequently set aside by the order of Tehsildar. Even then, the name of Ghalandu continued to be recorded without any right or title and after the death of Ghalandu, the names of defendants were mutated along with the name of mother of plaintiffs Bilai.

4. That, the defendants applied for partition and the Tehsildar vide order dated 16.07.1986 allowed the application for partition. The mother of the plaintiffs preferred an appeal against the order of Tehsildar before the Sub-Divisional Officer (S.D.O.) and the case was remanded to the Tehsildar vide order dated 04.12.1987. Even after remand, revenue Court allowed the application for partition vide order dated 05.12.1988 and thereafter, the plaintiffs preferred an appeal before S.D.O. which was rejected vide order dated 20.06.1989.

5. Learned counsel for the plaintiffs submitted that the defendants do not have title over the suit land, even then they have disposed of some part of the suit property without any authority. It was also pleaded by the plaintiffs that mother of the plaintiffs Bilai had moved an application in the year 1966 before the Tehsildar, Jashpur against illegal mutation in the name of Ghalandu whereupon the SDO vide order dated 27.03.1966 directed the Tehsildar to pass an order of mutation whereupon the Nayab Tehsildar, Jashpur vide order dated 05.07.1966 ordered to delete the name of Ghalandu from the revenue record and declare the sale deed in favour of Ghalandu as illegal and further held that he can challenge the same by filing a civil suit to establish his title. However, Ghalandu did not challenge the same.

6. The case of the defendants on the written statement was that the original owner of the suit property was late Bala Nageshiya who is a person of scheduled tribe and as per prevailing customs in the scheduled tribe, the daughters do not inherit the property of their father. After the death of Bala Nageshiya, the proerty was recorded in the name of Marhi @ Bilri, the wife of Bala Nageshiya. Daughter Bilai was married by Bala Nageshiya in his life time and she started living with husband. The land in question was sold by Marhi through a registered sale deed to Ghalandu and Ghalandu also executed a sale deed for some part of the land in favour of Ruben, Rameshwar and Sukhcharan and the land was mutated in the name of the above purchasers and no objection was taken by the plaintiffs at the time of mutation. It was further pleaded that Ghalandu was the exclusive owner of the property during his lifetime and after his death, the land was mutated in the name of the defendants. It was further submitted by the defendants that late Ghalandu preferred an appeal against the order dated 25.06.1966 passed by Tehsildar and the SDO vide order dated 10.06.1967 disposed of the appeal with the direction that the case involves dispute regarding

title and the revenue Court is not competent to decide and the parties were directed to get the question of title decided by civil Court and till such time the mutation proceedings may be stayed and status-quo be maintained.

7. That, as the name of Ghalandu was continued to be recorded in the revenue record and after the death of Ghalandu, the names of the defendants were mutated in the revenue record, no civil suit was filed by the plaintiffs. It was further pleaded that as Ghalandu and Bilai belong to same category, Ghalandu did not object recording the name of Bilai in the revenue record. It was also pleaded by the defendants that they are in possession of the suit property since 1953 and as such they have perfected their title and the suit of the plaintiffs is barred by law of limitation.

8. On the basis of the pleadings, the trial Court framed issues and recorded a finding that parties to the proceedings are scheduled tribe and as per Section 2 (2) of the Hindu Succession Act (hereinafter referred to as 'the Act'), the provisions of the Act is not applicable to the persons belonging to scheduled tribe unless the Central Government by notification in the official gazette otherwise directs. As there is no pleading in the plaint that the parties have adopted Hindu law, a presumption has been drawn that parties to the proceedings are governed by customs prevailing in the caste. Thus, on the basis of the statements of the defendants' witnesses it has been held by the trial Court that as per customs in Nageshiya caste, daughters do not inherit the property of their father.

9. It was also held by the trial Court on the basis of the evidence available on record and on the basis of the revenue record of Ex.P/9 for the year 1951-52 that father of Bilai late Bala Nageshiya died in the year 1950 and on the basis of the above discussions, the learned Civil Judge recorded a finding that the parties are governed by caste customs and as per customs prevailing, the daughter has no right in the property of her father.

10. The learned trial Court further recorded a finding that father of the defendants Ghalandu purchased the suit property for a consideration of Rs.500/- through a registered sale deed dated 29.12.1953. The fact that Bala Nageshiya has four daughters, however, the name of Biali was only entered into revenue record demonstrates that as per customs in Nageshiya caste and as per Clause 44 (g) of the then *Jashpur State Vaugibule Urge*, which was in force at the time

of death of Bala Nageshiya, the property of Bala Nageshiya devolved upon his wife Marhi who sold the same vide registered sale deed 29.12.1953.

11. Relying upon Section 44 of the then *Jashpur State Vaugibule Urge*, in the matters of succession which provides that in the event of death of a tenure holder, the property devolves upon the eldest lineal descendant male member of the family and if no male member is in the family then, the property devolves upon the widow and if there is more than one widow then, the property devolves upon the eldest widow of the family and the daughters and their progenies do not succeed to the property of their father. Thus, learned trial Court held that after the death of father of Biali in the year 1950, the property was inherited by her mother Marhi who sold the same vide registered sale deed 29.12.1953 in favour of Ghalandu and on the basis of the material available on record, the Court below held that Ghalandu purchased the property by paying a sum of Rs.500/- as consideration.

12. Thus, the trial Court recorded a finding that the name of Ghalandu continued to be recorded in the revenue records which was recorded on the basis of the registered sale deed and transfer effected by Marhi was not challenged either by Bilai even after revenue Court directed the parties in this regard and therefore, the plaintiffs are not competent to challenge the transfer effected by Marhi and the revenue entries in the name of Ghalandu. Accordingly, the trial Court held that the plaintiffs have failed to prove that their mother Biali inherited the suit property from their father and after the death of Bilai, the plaintiffs are the owners of the suit property not Ghalandu and therefore, the defendants have no title over the suit property and further that question of adverse possession is not applicable in the present case.

13. It was further held by the trial Court that though Bilai was aware of the execution of the sale deed dt. 29.12.1953 right from year 1956 even then, she took no steps to get the above sale deed cancelled within three years by filing a civil suit despite being directed for the same vide order dated 10.06.1967 by the revenue Court and therefore, the instant suit which was filed on 29.09.1989 is barred by law of limitation and the plaintiffs and their mother Bilai are stopped from challenging the same. Thus, the trial Court recording the above findings dismissed the suit of the plaintiff. The appeal preferred by the appellants/plaintiffs was also dismissed by the first Appellate Court by recording identical findings as recorded by the trial Court.

14. Learned counsel for the appellants submits that the findings of both the Courts below that Nageshiya tribes are governed by customs only regarding succession is erroneous and it is further submitted that it was the onus of the defendants to establish that in Nageshiya tribes, they are not governed by Hindu Succession Law but are governed by their customs and as per customs of Nageshiya caste, the daughters do not inherit the property of their father. However, the Courts below erroneously held that burden of proving that Nageshiya caste are not governed by customs is that of the plaintiffs.

15. I have heard learned counsel for the respective parties and I have gone through the records of both the Courts below.

16. Both the Courts below by recording a concurrent finding of facts have arrived to the conclusion;

1) That, the parties are Nageshiya by caste and as such member of scheduled tribe, they are not governed by Hindu Succession Act.

2) That, on the basis of the pleadings of the respective parties, it has been held that there is no pleading by the plaintiffs that the parties have adopted Hindu customs, therefore they are governed by Hindu Succession Act. On the other hand, the defendants have pleaded and proved by evidence that they are governed by customs prevailing in their caste where daughters do not inherit the property of their father.

3) That, Bala Nageshiya died in the year 1950 and the property devolved upon his widow Marhi @ Bilri Nageshiya as per Section 44 of the then *Jashpur State Vaugibule Urge,* then in force in Jashpur State, Marhi transferred the suit land through a registered sale deed in the year 1953 to Ghalandu, the father of the defendants who got his name mutated in the revenue record in the year 1966.

4) That, mother of the plaintiffs Bilai was aware of the sale deed effected by her mother Marhi in the year 1966, even then she did not challenge the sale deed till 1989 and as such the suit is barred by law of limitation.

5) That, as Bilai did not succeed to the estate of her father, the question of plaintiffs succeeding to the estate of Bilai does not arise.

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17. The above finding is concurrent findings of facts recorded by both the Courts below which is based on objective analysis of material available on record and also based on customary law and the law prevailing in then Jashpur State.

18. Thus, on the basis of the above discussions, I am of the opinion that there is no substantial question of law involved for adjudication of this second appeal and the same deserves to be dismissed at motion stage itself and it is dismissed accordingly.

19. However, there shall be no order as to costs.

Sd/-
Dhirendra Mishra
Judge

Ram